

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

CRIM. NO. JKB-16-0363

MARQUISE MCCANTS,

Defendant.

* * * * *

MEMORANDUM AND ORDER

Pending before the Court is Defendant's Motion to Invoke Structural Error Review. (ECF No. 1075.) Specifically, Defendant alleges a Confrontation Clause violation, error in the jury instructions, and an *Apprendi* error at his sentencing. The Court construes this as a motion to vacate Defendant's conviction pursuant to 28 U.S.C. § 2255 because that is the only pathway which permits him to collaterally attack his conviction and sentence on the above grounds.

However, Defendant previously filed a motion to vacate his sentence under § 2255 in February 2024. (ECF No. 1056.) The Court denied that motion in November 2024. (ECF No. 1072.) To file a second motion to vacate under § 2255 in this Court, Defendant must first receive authorization from the United States Court of Appeals for the Fourth Circuit. *See* 28 U.S.C. §§ 2244(b), 2255(h). Defendant has not received authorization from the Fourth Circuit to file the instant Motion in this Court. Thus, this Court lacks jurisdiction to decide the matter. *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003). However, the Court will provide Defendant with a packet of instructions which he must follow if he wishes to seek authorization from the Fourth Circuit to file another motion to vacate under § 2255 in this Court.

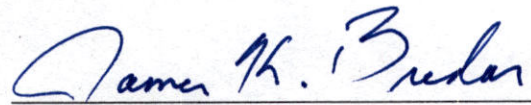
Pursuant to Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2255, the Court is required to issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability is a “jurisdictional prerequisite” to an appeal from the Court’s order. *United States v. Hadden*, 475 F.3d 652, 659 (4th Cir. 2007). A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where, as here, a motion is denied on a procedural ground, a certificate of appealability will not issue unless the petitioner can “demonstrate both (1) that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Rose v. Lee*, 252 F.3d 676, 684 (4th Cir. 2001) (internal marks omitted). Petitioner does not satisfy the above standards. Accordingly, a certificate of appealability will not issue.

For the foregoing reasons, it is hereby ORDERED that:

1. Defendant’s Motion to Invoke Structural Error Review (ECF No. 1075) is DENIED;
2. A certificate of appealability SHALL NOT ISSUE;
3. The Clerk SHALL PROVIDE a copy of this Memorandum and Order and a copy of the instructions and form packet for filing a motion under 28 U.S.C. § 2244 (authorization of District Court to consider second or successive application for relief) to Defendant; and
4. The Clerk SHALL CLOSE this case.

Dated this 16 day of December, 2025.

BY THE COURT:

A handwritten signature in blue ink, reading "James K. Bredar". The signature is written in a cursive style with a large, stylized "B" and "R".

James K. Bredar
United States District Judge